

ORIGINAL



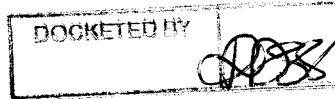
0000131013

BEFORE THE CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

NOV 7 2011



RECEIVED

2011 NOV -7 P 4:40

AZ CORP COMMISSION
DOCKET CONTROL

Commissioners

GARY PIERCE – Chairman

BOB STUMP

SANDRA D. KENNEDY

PAUL NEWMAN

BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A FINANCING
APPLICATION

DOCKET NO. W-04254A-08-0362

**SECOND SUPPLEMENTAL TO
MOTION TO INVESTIGATE EX
PARTE COMMUNICATIONS**

**MOTION TO STAY
PROCEEDINGS**

**MOTION FOR INDEPENDENT
INVESTIGATION**

BY THE INTERVENER:

Intervener supplements its Motion to Investigative Ex Parte Communications dated November 2, 2011 and its First Supplemental of its Motion to Investigative Ex Parte Communications dated November 2, 2011 as follows:

On June 29, 2011, the Commission entered an order that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission Decision in this matter is final and non-appealable.

On November 7, 2011 Intervener, acting as Complainant in W-04254A-11-0323, received Commission records in response to Complainant's First Data Request.

Among the records received are emails (Exhibit 1) documenting that Senior Commission staff and legal counsel allegedly engaged in a conspiracy to knowingly and

willfully initiate, conduct and fail to disclose unauthorized communications with Patricia Olsen, owner of the Montezuma Rimrock Water Company in violation of R14-3-113(C)(2) and (D)(1).

The records also reveal that Ms. Olsen allegedly knowingly and willfully engaged in unauthorized communications with Staff in violation of R14-3-113(C)(1).

The emails indicate senior ACC staff members directed a staff engineer to contact Montezuma Rimrock on September 27, 2011, while the Ex Parte orders were in effect for this docket as well as W-04254A-11-0323 (Formal Complaint) and W-04254A-11-0296 (Emergency Rate Increase Application).

Ms. Olsen replied to the email on September 29.

The email traffic reveals:

At 11:47 a.m., September 27, 2011, ACC staff attorney Charles Hains received an email from Montezuma Rimrock attorney Douglas Fitzpatrick with an attachment that was an undocketed copy of the Company's Motion to Withdraw its Emergency Rate Application (W-04254A-11-0296).

The motion, which was not docketed until September 29, stated in part that the company had "found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility."

At 11:55 a.m., Sept. 27, Mr. Hains forwarded Mr. Fitzpatrick's email to the following Commission staffers: Darak Eaddy, staff utility analyst assigned to Montezuma Rimrock; Marlin Scott Jr., staff engineer assigned to Montezuma Rimrock; Steven Olea, Utilities Division Director; Darron Carlson, Public Utilities Analyst Manager; and Nancy L. Scott, an attorney in the ACC legal division.

At 3:01 p.m., Sept. 27, Mr. Scott sent an email to Ms. Olsen stating: "Staff here is interested in how this was done. Could you please contact me to discuss this resolution."

At 11:43 a.m., Sept. 29, Ms. Olsen sent an email to Mr. Scott stating: "I am working with a company to lease equipment or I will just pay cash for it."

At 12:20 p.m., Sept. 29, Mr. Scott forwarded Ms. Olsen's email to Steve Olea, Charles Hains, Nancy L. Scott, Darron Carlson, Darak Eaddy, and Del Smith, Utilities Engineer Supervisor. This email included the entire string of Emails beginning with Mr.

Fitzpatrick's initial contact continuing through Mr. Scott's request for more information from Ms. Olsen and Ms. Olsen's subsequent reply.

At no time have any members of the Commission staff reported the Ex Parte communications on the public record as required by R14-3-113(D)(1).

The information provided by Ms. Olsen cuts to the heart of the proceedings in this Docket and was subsequently acted upon by Staff, without Intervener's knowledge, when Staff filed its October 31 report stating that Commission approval was not needed to approve an "operating lease" and recommending that this Docket be closed.

The information revealed by the emails suggests there is additional contact between Staff and Montezuma Rimrock that has not yet been fully disclosed. As stated in Intervener's initial Request for an Investigation of Ex Parte Communications, there is written evidence of unauthorized communications in Staff's October 31 filing in this docket when Staff asserts the arsenic treatment equipment costs \$40,000. This cost estimate has not been publicly revealed. In addition, Staff stated in its October 31 filing that the Company does not intend to seek an arsenic surcharge adjustment. There is no statement, however, by the Company supporting this contention.

Intervener also provided evidence in the Supplemental Request for an Investigation of Ex Parte Communications, that the Company and Staff have conducted unauthorized communications concerning the Company's intention in connection with its Amended Lease disclosure filed on October 25. The Company states it intends to file a copy of a final lease and that it would not proceed with construction of the arsenic treatment facility until it obtains Commission approval. Staff, however, claims in its October 31 filing that the Company's planned disclosure of the lease is for "informational" purposes and that would only be for use in a future rate case.

There is also evidence that the Company and Staff have exchanged information concerning the terms of the undisclosed "lease" such that Staff understands the Company will obtain an "operating lease" rather than a "capital lease".

Intervener now has substantial evidence in the form of emails that Staff and Montezuma Rimrock have not conducted themselves in an honorable, professional or legal manner in these proceedings.

Intervener has lost all trust in Staff that these proceedings have been and will be conducted in a fair and honest manner and according to Commission Rules and state Statute.

Intervener therefore Moves the Commission to Stay the Proceedings in Docket and issue an Order preventing Montezuma Rimrock moving forward with construction of the arsenic treatment facility.

Intervener further Moves the Commission to undertake an Independent Investigation of all unauthorized communications between Staff and the Company, the extent of the Conspiracy among Senior Staff members to engage in unauthorized communications and Staff's failure to publicly disclose such communications.

Dated this 7th Day of November 2011,



John E. Dougherty
Intervener

Copies of the foregoing mailed
This 7th day of November, 2011 to:

Douglas C. Fitzpatrick
LAW OFFICE OF DOUGLAS C. FITZPATRICK
49 Bell Rock Plaza
Sedona, AZ 86351

Patricia D. Olsen, Manager
MONTEZUMA RIMROCK WATER COMPANY, LLC
P.O. Box 10
Rimrock, AZ 86335

Charles Hains

From: Marlin Scott Jr
Sent: Thursday, September 29, 2011 12:20 PM
To: Steven Olea
Cc: Charles Hains; Nancy L Scott; Darron Carlson; Darak Eaddy; Del Smith
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI.....

From: Patricia Olsen [<mailto:patsy@montezumawater.com>]
Sent: Thursday, September 29, 2011 11:43 AM
To: Marlin Scott Jr
Subject: Re: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Marlin,

I was out of town for two days. I am working with a company to lease the equipment or I will just pay cash for it.

*Patricia Olsen, President
Montezuma Rimrock Water Co. LLC
P.O. Box 10, Rimrock, AZ 86335
928-592-9211
www.MontezumaWater.com*

From: Marlin Scott Jr <MScottJr@azcc.gov>
To: patsy@montezumawater.com
Sent: Tuesday, September 27, 2011 3:01 PM
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Patsy,

Per the attached letter from your attorney, it states, "The Company as found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility". Staff here is interested in how this was done. Could you please contact me to discuss your resolution.

Thx.
Marlin
Marlin Scott, Jr.
Utilities Engineer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Phone: 602.542.7272; Fax: 602.542.0766
Email: mscottjr@azcc.gov

From: Charles Hains
Sent: Tuesday, September 27, 2011 11:55 AM
To: Darak Eaddy; Marlin Scott Jr
Cc: Steven Olea; Darron Carlson; Nancy L Scott
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI

Charles Hains
Arizona Corporation Commission
Attorney, Legal Division
Ph: (602) 542-3402
Fx: (602) 542-4870
email: chains@azcc.gov

From: Doug Fitzpatrick [<mailto:fitzlaw@sedona.net>]
Sent: Tuesday, September 27, 2011 11:47 AM
To: Charles Hains; patsy@montezumawater.com; jd.investigativemedia@gmail.com
Subject: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Attached please find Motion to Withdraw Application for Emergency Rate Increase in the above matter.

Thank you,

Lois
for Douglas Fitzpatrick

===== This footnote confirms that this email message has
been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov

Charles Hains

From: Marlin Scott Jr
Sent: Wednesday, October 26, 2011 12:14 PM
To: Charles Hains
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Follow Up Flag: Follow up
Flag Status: Flagged

...here's 1 for 1.02.

Marlin Scott, Jr.
 Utilities Engineer
 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007
 Phone: 602.542.7272; Fax: 602.542.0766
 Email: mscottjr@azcc.gov

From: Patricia Olsen [<mailto:patsy@montezumawater.com>]
Sent: Thursday, September 29, 2011 11:43 AM
To: Marlin Scott Jr
Subject: Re: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Marlin,
 I was out of town for two days. I am working with a company to lease the equipment or I will just pay cash for it.

*Patricia Olsen, President
 Montezuma Rimrock Water Co. LLC
 P.O. Box 10, Rimrock, AZ 86335
 928-592-9211
www.MontezumaWater.com*

From: Marlin Scott Jr <MScottJr@azcc.gov>
To: patsy@montezumawater.com
Sent: Tuesday, September 27, 2011 3:01 PM
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Patsy,
 Per the attached letter from your attorney, it states, "The Company as found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility". Staff here is interested in how this was done. Could you please contact me to discuss your resolution.

Thx.
 Marlin
 Marlin Scott, Jr.
 Utilities Engineer
 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007

Phone: 602.542.7272; Fax: 602.542.0766
Email: mscottjr@azcc.gov

From: Charles Hains
Sent: Tuesday, September 27, 2011 11:55 AM
To: Darak Eaddy; Marlin Scott Jr
Cc: Steven Olea; Darron Carlson; Nancy L Scott
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI

Charles Hains
Arizona Corporation Commission
Attorney, Legal Division
Ph: (602) 542-3402
Fx: (602) 542-4870
email: chains@azcc.gov

From: Doug Fitzpatrick [<mailto:fitzlaw@sedona.net>]
Sent: Tuesday, September 27, 2011 11:47 AM
To: Charles Hains; patsy@montezumawater.com; jd.investigativemedia@gmail.com
Subject: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Attached please find Motion to Withdraw Application for Emergency Rate Increase in the above matter.

Thank you,

Dois
for Douglas Fitzpatrick

===== This footnote confirms that this email message has
been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov
